IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1537 OF 2004

The State of Maharashtra ..Appellant

V/s.

Shaikh Mohammed Muzammil Jamil Ahmed ..Respondent

Mr.V.A.Thorat Advocate General alongwith Mrs.U.V.Kejriwal Additional Public Prosecutor for the appellant/State.

Mr.Shahid Azmi for the Respondent.

Coram : R.M.LODHA & R.S.MOHITE,JJ

Date : 08.02.2005.

PC

. By the order dated 16.12.2004 the learned Judge presiding over the Special court constituted under Prevention of Terrorist Act 2002 (POTA-2002) granted interim bail to the accused/respondent subject to final hearing of Bail application No.9/2004. Aggrieved thereby, the State has preferred an appeal under Section 34 of the Prevention of Terrorist Act 2002 (POTA 2002).

2. Inter alia, the interim bail was granted by the learned Special Judge to the present respondent because the learned Special Judge held that accused/respondent was entitled to claim parity

alongwith accused no.1. By a separate order passed by us today while disposing of Criminal Appeal No.1538/2004 and Criminal Appeal No.1115/2004, we have set aside the interim bail granted to the accused no.1. Resultantly the interim bail granted to the accused/respondent has to be set aside.

3. Bail application No.9/2004 is pending before the Special Court and the learned Counsel for the Respondent expressed that it would be in fitness of things if the said Bail application is heard and disposed of after the prosecution examines the witnesses from Aurangabad whose statements under Section 161 of Cr.P.c. were recorded in relation to the present respondent. The submission of the learned Counsel for the respondent is reasonable.

4. Hence, following order :-

O R D E R

(i) The order dated 16.12.2004 granting interim bail to the present respondent is set aside.

(ii) The prosecution is expected to examine expeditiously the witnesses from Aurangabad whose statements under Section 161 of Cr.P.C. were recorded in relation to the present respondent.

(iii) The Special court shall hear Bail application No.9 of 2004 after the aforesaid witness/witnesses are examined by the prosecution and pass an appropriate order granting or refusing the bail.

(iv) All contentions of the parties are kept open to be agitated before the learned Special Court.

(v) The accused shall be at liberty to make fresh application or amend the existing Bail application, as may be advised.

(vi) Appeal is disposed of accordingly.

(R.M.LODHA,J)

(R.S.MOHITE,J)